

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TYRONE MCDOWELL,

Plaintiff,

v.

21-CV-338

DENIS MCDONOUGH, Secretary  
Department of Veterans Affairs,

Defendant.

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**DECISION AND ORDER**

Plaintiff Tyrone McDowell commenced this action on March 3, 2021, alleging discrimination on the basis of race and color, harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Dkt. 1. On June 6, 2022, McDonough moved to dismiss the Complaint. Dkt. 33. Plaintiff opposed the motion, Dkt. 41, and McDonough replied. Dkt. 43. This Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 17.

On December 21, 2022, Judge McCarthy issued a Report and Recommendation ("R&R") recommending that this Court deny McDonough's motion to dismiss. Dkt. 49. On January 4, 2023, McDonough objected to the R&R. Dkt. 50. Plaintiff did not respond to the objections, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district

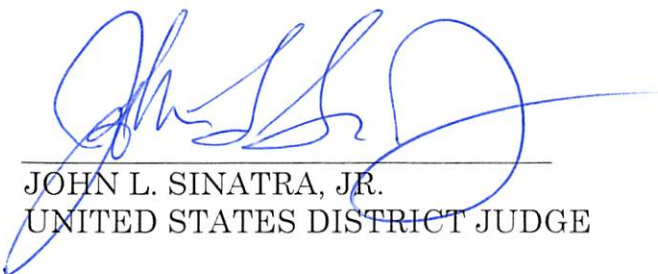
court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, this Court accepts and adopts Judge McCarthy's recommendation.

For the reasons stated above and in the R&R, the Court DENIES McDonough's [33] motion to dismiss. The case is referred back to Judge McCarthy for further proceedings consistent with the December 22, 2021 referral order (Dkt. 17).

SO ORDERED.

Dated: January 31, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE